

EXHIBIT 2
continued

Catherine Magone

to her?

A. No.

Q. Did you ever express your concerns about her performance in writing to her?

A. No.

Q. What issues did you have about her performance in July?

A. It was very clear to me -- well, first of all, it was -- it was really in July that I began to directly supervise Carole. Prior to that Diane Lantz was supervising her. So upon Diane's resignation, I started to take more notice of what Carole was doing. I found that there was very little follow up of a lot of her cases. There was a meeting, that we have weekly meetings that we talk about cases and length of stay and issues regarding that. There was one particular meeting which is held at 1 o'clock where every case that I asked her about, she claimed that she did not -- had not seen yet. There were -- and I talked to her about that. I talked to her about her -- my concern that she was not adjusting to a case management model that we had at Lawrence. She complained

Catherine Magone

that her workload was too high and that she --
you know, she had so much work to do. That's
why she hadn't done anything with the mental
health training. We discussed that she needed
to prioritize better.

Q. The mental health training you are
referring to had happened in the end of June?

A. Yes.

Q. And you are stating you made these
expressions of concern to her in July?

A. Oh, let me take that back. That
wouldn't have been July. That wouldn't have
been July, no. That wouldn't have been July.
No. July my concerns were her follow up on
cases, her response to staff, asking for
information or request on her part. Her lack of
documentation in the medical record was a real
concern for me. And we had a discussion about
that. And Carole knew that it was serious
enough that she E-mailed me the following day,
asking if I was considering that a verbal
warning.

Q. You said no, right?

A. I said no because it wasn't at the

1 *Catherine Magone*

2 time. But I was concerned.

3 Q. Well, was it not -- if it wasn't a
4 verbal warning, then what was it?

5 A. It was a little counseling session,
6 because I wanted her to be successful.

7 Q. Didn't she, in fact, ask to meet
8 with you prior to this what you call work
9 session with her prior?

10 A. No.

11 Q. She didn't ask to meet with you?

12 A. No. I asked to meet with her.

13 Q. So -- but correct me if I'm wrong.
14 There was no verbal warning. You never warned
15 her, is that right?

16 A. No, I just expressed my concerns.

17 Q. You never warned her, is that
18 right?

19 A. That's right.

20 Q. And you put that in writing, isn't
21 that right?

22 A. I put the discussion --

23 Q. The fact that it wasn't -- you said
24 you put what discussion that you had in writing?

25 A. That I had met with her and what we

Catherine Magone

Q. I'm going to show you what is actually Plaintiff's Exhibit 10 for identification. Do you see that?

A. Yes.

Q. That one you confirmed there was no verbal warning to Ms. Newmark, is that right?

A. That's correct.

Q. Was there anything inaccurate about what your response was to her?

A. No.

Q. Did you ever meet with Ms. Newmark concerning her performance?

A. Yes.

Q. When?

A. In July.

Q. When you say July, when in July?

A. July 20.

Q. And that, the E-mail that you have before you, Exhibit 10, that relates to that same meeting, isn't that right?

A. Yes.

Q. Wherein you say there was no verbal warning, is that right?

A. That's correct.

Catherine Magone

Q. Do you know whether Ms. Newmark received more than one nomination for a big heart award?

A. Not to my knowledge.

Q. Did you ever do anything in connection with receiving the nomination for big heart award with respect to Ms. Newmark?

A. No.

Q. Did you ever have a procedure by which you did do that for other employees?

MR. KEIL: Objection as to

form.

A. It is my style if I think about it, I will try to give recognition to people, but it is not always.

Q. When you say you give recognition to people, what do you do?

A. If I knew about it and thought about it, I might bring it up in line up. But I don't do that all the time.

Q. Did you do that with respect to Ms. Newmark?

A. No.

Q. Apart from Plaintiff's Exhibit 8

Catherine Magone

name of Susan relayed to you, is that right?

A. Yes.

Q. Did you ever ask Ms. Newmark about her side of the story, so to speak?

A. No, I did not.

Q. Did you ever attempt to ask Ms. Newmark about her side of the story?

A. No.

Q. It says one of the CM staff. Is that case management?

A. Correct.

Q. Susan is -- what is her position?

A. Case manager.

Q. Did you ever speak to Ms. Newmark at any of the meetings you attended with Pat Orsaia about the issue that is relayed in Plaintiff's Exhibit 13?

A. No.

Q. Directing your attention to Plaintiff's Exhibit 14, do you see that?

A. Yes.

Q. This case manager that you are referring to, there are how many case managers in the case management department?

Catherine Magone

A. Nine.

Q. Colette in this instance, did you ever ask Ms. Newmark about what her view of this incident was, Plaintiff's Exhibit 14?

A. No, I did not.

Q. Is there a reason why not?

A. Because I called her and asked her to do the PRI.

Q. Did you ask Ms. Newmark?

A. I did ask her why she didn't respond.

Q. What did she say to you?

A. She said to me that she didn't get the message.

Q. Did you put that anywhere in writing?

A. No, I did not.

Q. Directing your attention to Plaintiff's Exhibit 15, what does Plaintiff's Exhibit 15 relate to?

A. It relates to evidence of poor documentation. Patients should not remain in the ICU for two weeks with only one social work note.

Catherine Magone

Q. Was that placed in Nicole Serra's file?

A. This was a case that Carole was working on.

Q. How do you know it was a case that Carole was working on?

A. Because this was told to me by a case manager.

Q. Where is that stated anywhere in Plaintiff's Exhibit 15? Where is the reference to the particular social worker, Ms. Newmark, Ms. Serra, hold on a second, or the case manager for --

A. That was involved in --

Q. Yes.

A. I have access to MIDAS (ph). We are on Meditech. We are electronic. And I can go in to see what, who is the social worker and when the note was written, so it is a fact.

Q. Why wasn't that stated anywhere in what is Plaintiff's Exhibit 15?

A. I didn't feel it was necessary.

Q. You didn't feel identifying the social worker was necessary?

1 *Catherine Magone*

2 A. If it is in her file.

3 Q. Whose file?

4 A. Carole's file.

5 Q. What about the case manager you
6 said you referred to?

7 A. I didn't include that.

8 Q. Why not?

9 A. Well, I felt it was really
10 irrelevant, because I went into the medical
11 record myself and saw that what the person told
12 me was actually true.

13 Q. What was this person?

14 A. The case manager when she got to
15 the floor.

16 Q. Who is the case manager?

17 A. I don't recall which case manager
18 it was.

19 Q. Okay.

20 A. It showed no follow up.

21 Q. Incidentally, by August 31, 2006,
22 you had been aware that Ms. Newmark had
23 complained about you about ageism, isn't that
24 right?

25 A. That's correct.

1 *Catherine Magone*

2 Q. So there is no reference to which
3 social worker or case manager. Did you speak to
4 Ms. Newmark about this?

5 A. Yes.

6 Q. Where is that documented?

7 A. I didn't document it.

8 Q. What did she say?

9 A. Over worked, unable to get to all
10 her cases.

11 Q. Where is that documented?

12 A. It is not documented.

13 Q. Going to Plaintiff's Exhibit 16,
14 you indicate in this that you spoke to
15 Ms. Newmark regarding her attendance?

16 A. That's correct.

17 Q. UTO is -- what does it stand for?

18 A. Unscheduled time off.

19 Q. What did she say with respect to
20 her need for the time off?

21 A. She had E-mailed me that she was
22 taking time off for this procedure. And that's
23 not the procedure that we follow when you are
24 requesting time off. There is a form to be
25 filled out, and it has to be approved by me.

Catherine Magone

Q. Did she fill that form out?

A. She did afterwards.

Q. So at that point it wasn't an
unscheduled time off?

A. No. But originally I had wanted to
think about whether or not I was going to
approve it.

Q. What was the reason for her taking
time off that you came to learn?

A. I don't understand the question.

Q. Why did she request the time off?

A. Which time off?

Q. In reference to the --

A. The three --

Q. No. You said I spoke --

A. Oh, she had a procedure, yes,
needed a procedure.

Q. What was the procedure?

A. A colonoscopy.

Q. Did you ever show Ms. Newmark any
of this correspondence concerning her?

A. No.

Q. Did you ever give her a performance
evaluation?

1 *Catherine Magone*

2 A. At her termination meeting.

3 Q. Prior to her termination meeting,
4 did you ever sit with her and go over her
5 performance?

6 A. The performance evaluation, per se?

7 Q. Performance evaluation, yes.

8 A. No.

9 (Plaintiff's Exhibit 17
10 10/5/06 Memo marked for identification, as
11 of this date.)

12 Q. Directing your attention to
13 Plaintiff's Exhibit 17, what was the purpose of
14 this memo to file and copy to Pat Orsaia?

15 A. I did this at the request of Pat
16 Orsaia.

17 Q. And was this to delineate the
18 reasons you decided to terminate Ms. Newmark's
19 employment?

20 A. To recap.

21 Q. And was one of the reasons Carole's
22 reaction to a business decision to assign
23 another team member to a palliative program was
24 unacceptable?

25 A. Correct.

1 *Catherine Magone*

2 Q. And her reaction involved going to
3 Pat Orsaia and complaining about ageism?

4 A. No.

5 Q. What did it involve?

6 A. Negativity.

7 Q. What negativity are you referring
8 to?

9 A. Negative behavior in general.
10 Going around -- I got information from Maura
11 Del Bene that she could not let it go. She was
12 harping on it all day long, unable to perform
13 her duties because she was so upset about it,
14 about not getting the palliative care position.

15 Q. Where was that communicated by you
16 concerning what Ms. Del Bene said to you?

17 MR. KEIL: Objection as to
18 form.

19 Q. Did you reduce what Ms. Del Bene
20 said to you in writing anywhere?

21 A. No.

22 Q. Did you ask Ms. Newmark what her
23 reaction as relayed to you by Ms. Del Bene was?

24 A. No.

25 MR. KEIL: Objection.

1 *Catherine Magone*

2 Q. So Carole's reaction to a business
3 decision didn't mean Ms. Newmark repeatedly
4 asking to meet with Pat Orsaia and you
5 concerning the fact that she believed you were
6 subjecting her to an age discrimination?

7 A. No.

8 Q. It wasn't based on that?

9 A. No.

10 Q. What happened, if anything, between
11 the September 28 meeting and the October 5
12 meeting -- termination of Ms. Newmark's
13 employment?

14 A. She started to decompensate.

15 Q. Decompensate, what do you mean?

16 A. She was so angry that she couldn't
17 get her work done. She was visibly angry.

18 Q. Where is that contained in writing
19 that she was visibly angry and couldn't get her
20 work done?

21 A. She was visibly angry and she was
22 talking amongst the other case managers and
23 social workers.

24 Q. In your presence?

25 A. No, but I was hearing about it.

1 *Catherine Magone*

2 Q. September 28 was the date in which
3 she expressed her concern about the fact that
4 you advised her you were selecting Ms. Serra
5 because of her age, and October 5 she was
6 decompensating. Is that what you are saying?

7 A. No. She was decompensating ever
8 since she found out that Nicole, before Pat and
9 I even ever met to -- with me to discuss it.

10 Q. Where was that ever in writing?
11 Where did you ever reduce that to writing?

12 A. It is not in writing.

13 Q. In her E-mail to Pat Orsaia, which
14 Pat Orsaia forwarded to you, you never accused
15 her of being angry or anything of that nature
16 with respect to appointing Nicole Serra, right?

17 MR. KEIL: Objection as to
18 form. Can you read the question back?

19 MS. NICAJ: I'll withdraw
20 it.

21 Q. September 28 was the meeting with
22 Pat Orsaia.

23 A. Correct.

24 Q. Ms. Newmark followed up with her
25 again her concerns about age related ageism

Catherine Magone

which you selected Nicole Serra, is that right?

A. That's correct.

Q. You received that communication --

A. Yes.

Q. -- from Pat Orsaia?

A. Yes.

Q. Did you ever in any subsequent communication to Ms. Newmark indicate in words or substance that she was handling the matter irrationally, that she was being angry, that you heard from other people that she was decompensating? I don't know what that means, but I'm using your word, decompensating.

A. No.

(Plaintiff's Exhibit 18

5/23/06 Memo marked for identification, as of this date.)

Q. I'm going to direct your attention to Plaintiff's Exhibit 18 for identification. Do you recognize that document?

A. I do.

Q. Did you ever respond to Ms. Newmark in writing?

A. I don't recall.

1 *Catherine Magone*

2 (Plaintiff's Exhibit 19

3 9/19/06 Memo marked for identification, as
4 of this date.)

5 Q. I'm going to show you what's been
6 marked as Exhibit 19 for identification. Do you
7 see that?

8 A. Yes.

9 Q. Did you communicate with
10 Ms. Newmark about what is marked as Plaintiff's
11 Exhibit 19?

12 A. I communicated with her regarding
13 that there had been no note and no plan on this
14 patient.

15 Q. Did you reduce that in writing?

16 A. I did not.

17 Q. Do you know what Colette Gelardi
18 meant by just thought you might like to know,
19 hope you are having a good time if you pick this
20 up?

21 A. I was on vacation.

22 (Plaintiff's Exhibit 20

23 9-page Performance Evaluation marked for
24 identification, as of this date.)

25 Q. I'm going to direct your attention

Catherine Magone

period?

A. I don't know.

(Plaintiff's Exhibit 21

24-page Human Resource Policies and

Procedures Guide marked for

identification, as of this date.)

Q. I'm going to show you what has been
marked as Plaintiff's Exhibit 21 for

identification. Directing your attention to --

I'm going to read to you, it is Lawrence

Hospital Human Resources Policies and Procedures

Guide. I have them Bates stamped N 423 through

N 446. To your knowledge, was Ms. Newmark a

non-exempt employee or an exempt employee?

A. Exempt.

Q. That means what?

A. Where are you? I'm asking you.

Q. That means what?

A. What does an exempt employee mean?

Q. Yes.

A. It's a salaried employee.

Q. To your knowledge, how long is
probationary period for a salaried employee?

A. Six months.

1 *Catherine Magone*

2 Q. What interactions, if any, did you
3 have with Ms. Newmark from September 28 until
4 October 5?

5 A. I don't recall.

6 Q. Did the appointment of Nicole Serra
7 by you to the palliative care unit or care
8 services come with any additional money, salary?

9 A. No.

10 Q. Any additional benefits,
11 compensation?

12 A. No.

13 Q. Apart from what you've already
14 testified to, do you recall ever meeting with
15 Pat Orsaia to communicate your concerns about
16 Carole Newmark?

17 A. I don't recall.

18 Q. Were you ever interviewed in
19 connection with Ms. Newmark's complaint about
20 age discrimination on your part?

21 MR. KEIL: Apart from
22 discussions with counsel?

23 MS. NICAJ: I'm not talking
24 about -- I mean during her employment at
25 the hospital.

CORRECTION SHEET

Re: Newmark v. Lawrence Hospital

The following corrections, additions or deletions were noted on the transcript of the testimony which I gave in the above-captioned matter, held on February 20, 2008.

<u>PAGE(S)</u>	<u>LINE(S)</u>	<u>SHOULD READ</u>
109	13-16	I'm trying to get my time
		frames clear. I'm confused.
		I believe I met with her to
		discuss -- but I'm not sure --
		to discuss Carole's unscheduled
		time off.

RITA C. DiPIPPA
Notary Public, State of New York
No. 4926137

Qualified in Westchester Co.
Comm. Filed in Westchester Co.
Commission Expires 4/11/2010

COMPU-TRAN SHORTHAND REPORTING

CATHERINE MAGONE